

**CITY OF MORGAN HILL  
JOINT REGULAR REDEVELOPMENT  
AND SPECIAL CITY COUNCIL MEETING  
MINUTES – MARCH 24, 2004**

**CALL TO ORDER**

Vice Chair/Mayor Pro Tempore Sellers called the meeting to order at 7:00 p.m.

**ROLL CALL ATTENDANCE**

Present: Vice Chair/Mayor Pro Tempore Sellers; Agency/Council Members Carr and Chang

Participating from Remote Locations: Chairperson/Mayor Kennedy (Washington, D.C.) and Agency/Council Member Tate (Scottsdale, Arizona)

**DECLARATION OF POSTING OF AGENDA**

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

**CITY COUNCIL SUBCOMMITTEE REPORT**

Mayor Kennedy indicated that he was in Washington, D.C. with members of the Santa Clara County Water District in order to lobby Congressional representatives and the administration to help provide funding for several issues important to Morgan Hill: 1) Corp of Engineers to continue their work on the Llagas Creek Flood Control project (PL 566), 2) the perchlorate clean-up project (\$4 million), and 3) continuation of the Pajaro River Watershed Joint Powers Authority (\$100,000). He stated that the group met briefly with Congressman Pombo, Congresswoman Zoe Lofgren, and Congressman Mike Honda. He stated that all representatives were favorable and positive about these funding requests. However, funds are scarce and that the administration has eliminated funding for all three projects. He felt that funding will be an uphill battle but that the City's congressional representatives will be working to try to get these funds approved.

**PUBLIC COMMENT**

Vice Chair/Mayor Pro Tempore Sellers opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

Mayor Kennedy and Council Member Tate indicated that they posted the agenda at their remote locations. Both indicated that no one from the public was in attendance to address the Agency/Council under the public comment portion of the meeting.

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Agency Member Carr and seconded by Agency Chang, the Agency Board unanimously (5-0) **Approved** Consent Calendar Item 1, as follows:*

1.        **FEBRUARY 2004 RDA FINANCE & INVESTMENT REPORT**

**Action:** **Accepted** and **Filed** Report.

## ***City Council Action***

### **CONSENT CALENDAR:**

Mayor Kennedy requested that item 2 be removed, City Attorney Leichter requested that item 3 be removed and Council Member Tate requested that item 5 be removed from the Consent Calendar.

**Action:**        *On a motion by Council Member Carr and seconded by Council Member Chang, the City Council unanimously (5-0) **Approved** Consent Calendar Item 4 as follows:*

4.        **APPROVE MAYOR'S REQUEST FOR REAPPOINTMENT TO THE AIRPORT LAND USE COMMISSION**

**Action:** **Approved** the Mayor's Request for Consideration of Reappointment to the Airport Land Use Commission by the Santa Clara County Cities Association's City Selection Committee.

2.        **UPDATE ON DEVELOPMENT PROCESSING SERVICES STUDY IMPLEMENTATION**

Mayor Kennedy referred to page 13 of the staff report, the matrix that contained a status report on implementation and study recommendation. He said that item number 2.0 works toward the creation of a one stop permit center, housing all development review departments in one facility. He noted that staff has indicated that under the current status, this item is pending the construction of new library. He noted that it is further being stated that the current CIP assumes the new library will be built on Alkire Avenue and that the old library would be remodeled and used by the Community Development Department and Public Works staff. He inquired whether an engineer from public works was at City Hall, beginning the process of implementing a one stop permitting center.

City Manager Tewes stated that it would not be appropriate to state that the City has moved toward a one stop permit center. He clarified that the City has assigned an engineer from the public works department to have office hours at City Hall. This has helped enormously in dealing with applicants who have inquiries relating to civil engineering issues. He stated that the report, as outlined, is correct in that the City has not yet moved toward a one stop permit center. He said that the City's greatest opportunity to have co-location of all of the appropriate staff is when the library is built. Thus, the

reference to the future CIP project that might bring the entire development review committee together in one building.

Mayor Kennedy inquired whether the City has to wait until this is done to start the process of creating a one stop permitting center.

City Manager Tewes responded that staff believes that the one stop permit process center has to wait until the construction of the new library. He felt that this might be an issue that the Council might wish to agendaize for future discussion as part of the budget process.

Mayor Kennedy requested that the discussion of a one stop permitting process be scheduled for a future agenda.

Mayor Pro Tempore Sellers felt that there would be costs associated with a one stop permit center and that the Council will need to figure out what the tradeoffs will be.

**Action:** *On a motion by Mayor Kennedy and seconded by Council Member Carr, the City Council unanimously (5-0): 1) **Accepted** Report on the Implementation Status of Development Processing Services Study Recommendations; and 2) **Directed** Staff to Report Back on the Implementation Status in October 2004.*

### **3. CONCESSION OPPORTUNITIES AT THE AQUATIC CENTER**

City Attorney Leichter referred to page 51 of the agenda packet. She indicated that there has been a proposal by the consultant which has been set forth in the recommendation. She stated that the recommendation before the Council is to enter into a consultant contract and noted that the contract contains a liability limitation. She indicated that the consultant agreed with this recommendation. She clarified for the record that any consultant agreement would be subject to her approval and would not contain this part of the consultant's proposal.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council on a 5-0 roll call vote: 1) **Approved** the City Operation of the Aquatic Center Concessions for the Baseline Year; 2) **Directed** Staff to Enter Into a Consulting Contract with Profitable Food Facilities (PPF) for \$11,000 from the Unallocated General Fund; and 3) **Allocated** \$70,000 from the Unallocated General Fund for Start-up Operational Costs.*

### **5. SPECIAL CITY COUNCIL MEETING MINUTES OF MARCH 10, 2004**

**Action:** *On a motion by Council Member Carr and seconded by Council Member Chang, the City Council, on a 4-0-1 vote with Council Member Tate abstaining (roll call vote), **Approved** the Minutes as written.*

## ***Redevelopment Agency and City Council Action***

**OTHER BUSINESS:**

**6. LOAN FOR OFF-SITE IMPROVEMENTS FOR DAY WORKER CENTER**

Director of Business Assistance and Housing Services Toy presented the staff report. He requested Council/Agency direction regarding the request by Leslie Miles and Charles Weston to modify the terms of their offsite improvement loan for the dayworker center as well as discussion relating to the offsite improvement requirements for interim uses.

Mayor Pro Tempore Sellers opened the floor to public comment.

Charles Weston stated that the issue of the offsite improvements came about because the City does not have a mechanism in place to allow a temporary use without the site being completely improved. He indicated that the offsite improvements were not something that he and his wife anticipated with the dayworker center. He stated that the City has entered into discussions with him and his wife about a loan which would be repaid to the City at a certain time. He said that he needs to install the improvements at this time because the dayworker center needs underground water and sewer which he will be constructing with the loan. In order to receive the loan from the City, he is required to pay the contractors prevailing wages, equating to approximately 25% more than he would have to pay in five years without the dayworker center as he would have secured a loan from a bank. He would base his decision on who would install the offsite improvements solely at his discretion of a low bid. The reason he is requesting he be granted a payment schedule is because he has to pay considerably more than he would have had to if he had installed the improvements at his leisure, or in five years when he was ready to develop the site. He indicated that staff represented something that has been discussed but requested that he be granted a payment schedule that extends beyond five years.

Agency/Council Carr noted that the difference between what the Council/Agency has already approved and what is now being requested is two additional years in which the loan would be paid off. He noted that in the first five years, there would be no interest or payments on the loan. In year six, payments would begin and the loan is to be paid off by year seven. He did not believe that it was good practice to negotiate terms at the dias. He inquired whether Mr. Weston would agree to having an interest rate attached to payments in years six and seven.

Mr. Weston stated that he did not object to having an interest rate attached to year six and seven and that he would like to renegotiate the loan being paid back at time of issuance of building permit. He stated that there may be a possibility that in five years, he may be ready to pull permits for his project. He would like the loan to continue beyond this time up to seven years. He clarified that he would like to pull building permits but not pay back the loan for two years.

Executive Director/City Manager Tewes agreed that it is bad practice to negotiate at the dias. He said that negotiations at the dias would change the basis for the original recommendation. He noted that these are improvements that would not otherwise be installed by the developer but are required by the temporary use of the dayworker center. He indicated that Mr. Weston is suggesting that if the ultimate

development is built within five years, he would not be required to install the improvements. He felt that the loan should be due and payable when the ultimate development of the site occurs.

In response to Agency/Council Member Chang's question, Mr. Weston indicated that he would be installing the offsite improvements immediately. He argued that because of the temporary use for the dayworker center is being developed at this particular time, he would have to pay approximately \$25,000 more for securing a loan from the City. If he has to apply for the loan with the City, he would like to receive some advantage as he has already spent considerable amount of time, money and effort on the dayworker center. He requested relief for agreeing to allow the dayworker center on his site.

Vice-chair/Mayor Pro Tempore Sellers stated that he appreciates Mr. Weston's concerns as they seem to have some validity. However, he expressed concern that the Agency/Council would be undertaking negotiations from the dias and felt that it would be inappropriate to do so. If this remains to be a concern to the applicant, he suggested that the applicant sit down with staff and try to negotiate the terms of the loan agreement unless the Agency/Council can come up with a solution that does not require having to go back and forth this evening.

Agency/Council Member Tate noted that the Council agreed to a three year temporary use. To go two years beyond this time period for a permanent use on the site would be the limit where the City would want to go. He felt that development of the site within five years was the appropriate length of time to develop a permanent use for the site.

Vice-chair/Mayor Pro Tempore Sellers said that it was his understanding that the facilities would be constructed in a relatively short period of time and would not be delayed. Because of the additional costs paid upfront many years prior to the permanent development of the site, and the cost incurred from prevailing wages, the applicant is requesting additional time to repay the loan. Whether this is proper is one that the Agency/Council has to discuss.

Mr. Weston said that he is still planning on developing the site in the appropriate speedy fashion. However, development would depend on how successful he is in a Measure P competition, noting that he has no control of allocations. He argued that the City has gone down the path of moving forward with a dayworker center and that the installation of offsite improvements are necessary in order to avoid flooding of the dayworker center.

No further comments were offered.

Agency/Council Member Carr noted that this loan has been discussed on multiple occasions and that each time the Agency/Council is being told that the reason that costs are incurring and the need for the loan is attributable to the fact that the City is requiring the offsite improvements for a temporary use. At the last meeting, he suggested that the Agency/Council take a look at the offsite improvements rather than to continue to discuss the terms of the loan. He was not sensing that this is anything that the Agency/Council is interested in considering. Therefore, he would withdraw his recommendation to discuss the need for the offsite improvements.

Mr. Toy indicated that the Agency/Council approved a loan that is due upon the issuance of a building permit for the permanent development or sooner than the term of the loan. If this remains an unresolved issue, the loan would be unresolved and the City would not be able to provide the financing needed for the offsite improvements for the dayworker center. He informed the Council that it approved staff's recommended five year loan, noting that the applicant originally requested a no interest, 10-year loan. However, the seven year loan period was a compromise.

Vice-chair/Mayor Pro Tempore Sellers noted that Agency/Council Member Carr was suggesting an appropriate rate of interest on the loan in years six and seven.

Chairman/Mayor Kennedy indicated that it was his understanding that staff met with Mr. Weston and that they came up with a proposal. It was his belief that the item on the agenda was a negotiated agreement between staff and the applicant.

Vice-chair/Mayor Pro Tempore Sellers noted that the original loan was due and payable at the time that the building permit is issued with no interest rate to be charged during the term of the loan.

Agency/Council Member Tate did not understand why the City would want to approve a loan beyond five years. He felt that the Agency/Council would want to encourage the development to take place within five years and not give the applicant two extra years to figure what he would develop on the site. He recommended that the Agency/Council place pressure on Mr. Weston to develop the permanent use after the dayworker center vacates the site. He did not see an advantage to the City going beyond a five year loan term. If the City has to go beyond five years, he recommended that a high percentage interest rate be charged so that there is an incentive for the property owner to proceed with development.

Vice-chair/Mayor Pro Tempore Sellers noted that the applicant has indicated that there are several items beyond his control such as a Measure P application. He said that the improvements to be undertaken will be installed soon and that they will not be significantly modified. It was his belief that several Agency/Council members have an interest in making sure that the terms of the loan will induce the applicant to proceed with the permanent development as quickly as possible. He inquired whether staff was aware of any City incentives in Measure C, or where there may be other issues that could impact the property owner's ability to develop the site.

Mr. Toy indicated that under Measure C, the Council will have a set aside for the downtown that Mr. Weston can compete for. However, there are other properties in the downtown and projects under the Downtown RFC that will be competing for the same set asides. He did not know how well Mr. Weston's project would score versus other projects. Regarding the offsite improvements, he said that it was thought that it would be appropriate to recycle the loan funds within five years so that they can be used for other projects. He noted that had it not been for the dayworker center, the developer would not have to install the offsite improvements until the site permanently develops. He understands that there are added costs associated with installing improvements at this time based on the prevailing wages. However, there is an added benefit of installing the improvements at this time and not taking the chance for escalation or inflation of costs. He felt that a fair tradeoff exists.

Mr. Weston stated that he fully intends to be as aggressive as he can to build the permanent use facility. When he and Mr. Toy talked, it was felt that it would take him five years to get his Measure C allotments and go through the development process to obtain building permits. He said that he would be spending \$20,000 extra and requested some relief by making the next two years, following receipt of building permits, to pay back the loan in payments. He was not suggesting that the loan be repaid in seven years as it may be the case that the loan would be paid back in two years following receipt of building permits. He stated that he would be willing to accept a percentage interest rate following receipt of building permits.

Agency/Council Member Tate stated that it was his understanding that there was an agreement that Mr. Weston would pay back the loan in its entirety once he pulled permits.

Agency/Council Member Chang noted that Agency/Council Member Carr suggested that an interest rate be applied in years six and seven and that Mr. Weston has stated his agreement to this suggestion. She inquired as to the interest rate that would be suggested by staff?

Mr. Toy clarified that the City does not have a set guidelines with regards to interest rates. However, the Agency/Council can use the Local Agency Investment Fund (LAIF) that is currently under 3%. Applying a 3% interest rate would add approximately \$5,200 in interest payments. He said that it was his belief that Mr. Weston is requesting that he be given a two year window period to repay the loan once he pulls building permit. If Mr. Weston is able to pull building permits in the third year, he would have years four and five to repay the loan. However, it is conceivable that Mr. Weston can wait until year five to start repayment on the loan.

Agency/Council Member Tate said that he now understands what Mr. Weston is requesting and that he would support it as long as the City keeps the pressure on to get the development completed within five years. If Mr. Weston wants a couple of years to repay the loan beyond the five years to help offset the financial impacts, he did not have a problem with this.

Mr. Toy summarized that Mr. Weston is requesting that once he pulls his building permit, this would start the two year period by which he needs to pay back the loan. The loan is to be amortized over a two year period. Conversely, if Mr. Weston has not pulled his building permits by year five, beginning in year six, the City would start amortizing the payments until year seven. The loan is to be paid back at the end of seven years whether or not he has pulled permits. He said that the Agency/Council could identify an interest rate of 3% or greater.

Executive Director/City Manager Tewes suggested that the interest rate be tied to the LAIF interest rate; an equivalent to investing in a certificate of deposit.

**Action:** *Chair/Mayor Kennedy made a motion, seconded by Agency/Council Member Chang, to approve a 7-year loan, deferring payments and interest for the first five years. Payments to be amortized over two years. In years six and seven, an LAIF interest rate is to be applied. Should the applicant pull building permits anytime before five years, the two*

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*year amortization begins at the point of when building permits are pulled and the interest rate begins calculating at that point.*

Agency/Council Member Tate said that he did not see an incentive for Mr. Weston to pull permits within the first five years with this motion.

Vice-chair/Mayor Pro Tempore Sellers expressed concern that the City would be in a position where Mr. Weston may have every intention of proceeding but because of Measure C, he would be precluded from proceeding and be doubly penalized. He felt that Mr. Weston would move as quickly as possible toward the permanent use of the site but that he suspected that the market would help push him along.

Agency/Council Member Carr inquired whether Agency/Council Member Tate has any suggested incentives. Would an incentive be to increase the interest rate in year six?

Agency/Council Member Tate felt that a higher interest rate might be a minor incentive but that it would signal the Agency/Council's intent.

Agency/Council Member Carr recommended that it be stated that the interest rate will be LAIF plus 1% and that it only be applied in year six and seven of the loan. If the applicant is able to pull building permits in year three, Mr. Weston would not be required to pay interest in years 3 and 4. If Mr. Weston waits five years to pull building permit, he would pay interest in years six and seven

Agency/Council Member Chang stated that she did not necessarily want the property owner to build homes in year three. She noted that a lot of the actions that have taken place to date were in order to support a dayworker center. The Agency/Council felt that in year five, the dayworker center would be able to find an alternative location.

Agency/Council Member Tate noted that year three is when the dayworker center needs to move off the site.

Agency/Council Member Chang indicated that only the interim use needs to be moved off the site but that the dayworker center may become a permanent use on the site. She did not know whether she wanted to include incentives as part of the loan agreement.

Chairman/Mayor Kennedy agreed with Agency/Council Member Chang. He did not see a downside of waiting the full seven years to have the loan repaid as the improvements will have been installed, a benefit to Depot Street and to the general area.

Agency/Council Member Tate expressed concern that there may be a situation where the dayworker center relocates after three years and the site sits vacant for four years in the heart of the downtown. He felt that the City needs to attach incentives that would encourage the developer to develop the site as soon as possible.



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Vice-chair/Mayor Pro Tempore Sellers stated that he was comfortable that there were sufficient incentives in place (e.g., market forces and personal incentives).

Chairman/Mayor Kennedy stated that it would be acceptable to add the LAIF interest rate as was suggested as a compromise.

Agency/Council Member Tate noted that Agency/Council Member Carr suggested an interest rate of LAIF plus 1% interest rate due and payable in year six to signal the Agency/Council's intent that it wants the site to permanently develop as soon as possible.

Chairman/Kennedy stated that he hears the applicant stating that as this is a public project, he has to pay the additional costs associated with prevailing wages. He did not want to add an additional burden and that he would recommend staying with the LAIF rate.

**Vote:** The motion carried 5-0 (roll call vote).

Vice-chair/Mayor Pro Tempore Sellers noted that Agency/Council Member Carr stated that he was satisfied with the offsite improvement requirements and that he does not need to discuss this issue further.

## ***City Council Action***

### **PUBLIC HEARINGS:**

#### **7. COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ANNUAL ALLOCATION (FY 2004-2005)**

Director of Business Assistance and Housing Services Toy presented the staff report. He informed the Council that the City received the same number of applications as it did last year. Therefore, staff recommends that the City continue funding programs at the same level as was provided last year with one exception: a new program that would fund youth transportation for lower income youth to the aquatics center. He indicated that that staff did not believe that the Lighthouse submitted an application but that a representative from the Lighthouse indicated that they submitted an application by the deadline. He informed the Council that the Lighthouse has requested \$20,000, noting that they received \$6,900 last year in CDBG funds, a roll over from the previous year. He said that the City has a situation where it would take funds from recommended organizations to provide funding to the Lighthouse or find other sources of funding. He noted that one funding alternative for the Lighthouse is to fund senior programs such as the Long Term Care Ombudsman Program and Operation Brown Bag from the Senior Housing Trust Fund, and then apply the \$5,800 in CDBG funds allocated for these projects and to the Lighthouse, \$1,000 less than the Lighthouse received last year. This alternative funding option would result in the Senior Housing Trust Fund coming up with an additional \$6,000.

Council Member Carr inquired how the Senior Housing Trust funds are generated.

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Mr. Toy responded that the City does not currently generate funds to the Senior Housing Trust fund other than through interest. Originally, this money was acquired through Measure P for senior housing.

Mayor Pro Tempore Sellers opened the public hearing.

The following individuals thanked the Council for its continued support and funding: John Jackson, Ombudsman Program, representing Director Donna Dominico; Gloria Ortega, Catholic Charities for Depot Commons project; Marie Ellen Reynolds, Second Harvest Food Bank; Nancy Schuh, Catholic Charities for the Day Break Respite Program; Martin Eiliuer, Project Sentinel; Dina Campeau, Emergency Housing Consortium; Angela Coventry, Community Solutions for La Isla Pacifica; Lori Escobar, Community Solutions, for the El Toro Youth Center/Friday Night Jams; and America Romero, Dayworker Center.

John Edwards stated that the Lighthouse application was lost in the paperwork at City Hall. He requested that the Council provide funding for the Lighthouse.

Shaley Adams, Acting Director of the Lighthouse, addressed the services provided to the youth who patronize the facility. She informed the Council that the Lighthouse needs the Council's funding support.

No further comments being offered, the public hearing was closed.

Mayor Kennedy noted that there was a possibility of using some of the Senior Housing Trust to fund some of the senior projects/activities. He stated that he assumed that this fund draws interest. He inquired as to the annual interest rate and whether these funds can be used for one or more of these senior projects.

Mr. Toy indicated that approximately 2% interest is earned and that there is approximately \$200,000 in the account, earning approximately \$4,000 a year in interest. He stated that the Senior Housing Trust fund can be used for senior programs/activities.

Mayor Kennedy noted that the Senior Housing Trust fund earns approximately \$4,000 in interest, and that this amount is close to the amount being recommended for the Live Oak Adult Daycare. He recommended that this program be funded from the Senior Housing Trust Fund and shift the \$3,990 to the Lighthouse.

Mayor Pro Tempore Sellers noted that the staff report recommends that the Long Term Ombudsman Program and the Operation Brown Bag program be funded through the Senior Housing Trust funds. These two requests equate to \$5,880. Should the Council agree to fund \$3,990 to the Lighthouse, it would be in addition to this amount.

Mayor Kennedy did not know if the Council wants to shift all of the money from the Senior Housing Trust Fund. He wanted to keep a bulk of the Senior Housing Trust fund intact as much as possible.

Mr. Toy indicated that the Lighthouse was funded \$6,893 dollars last year. However, this amount was a roll over from the previous fiscal year. Therefore, it was not an allocation from the new fund and that it was existing funding that was rolled over.

Council Member Carr noted that staff is recommending that the Council take the Long Term Care Ombudsman Program and the Operation Brown Bag and fund these two amounts from the Senior Housing Trust fund. This would result in making \$5,880 in CDBG funding for the Lighthouse.

**Action:** *Council Member Carr made a motion, seconded by Council Member Tate, to **Adopt** the Resolution for Appropriation of Fiscal Year 2004-2005 CDBG Funds, allocating resources from the Senior Housing Trust Fund program to the Long Term Ombudsman Program and the Operation Brown Bag from the Senior Housing Trust Fund; using the balance of CDBG funding to assist the Lighthouse (\$5,880).*

Council Member Chang inquired whether there was a possibility to add another \$1,000 from the Senior Housing Trust fund to match last year's funding.

Mr. Toy indicated that the City would be taking \$1,000 from CDGB funds from one of the organizations (e.g., Live Oak Adult Day services) and replacing it with \$1,000 from the Senior Housing Trust.

Council Member Carr felt that the Council needs to be careful because the City is already drawing down the Senior Housing Trust fund by approximately \$13,000. Although this is not much when it comes to a \$200,000 account, these funds will eventually run out. He felt that the Council needs to be carefully with these funds as what is being proposed with this action is a little more than the interest earns. Therefore the funds are still being drawn down. If the Council continues drawing from this account, it will allow less funding in the future. He noted that there is concern about the CDBG program being available in the future with the current federal budget. Therefore, he would prefer to support the motion as stated.

Mayor Pro Tempore Sellers stated that this is always one of the heartening and simultaneously heartbreaking items that the City has to undertake as there is an incredible amount of work/services that takes place in this community, and that the needs are never met by the meager resources.

**Vote:** The motion carried 5-0 (roll call vote).

**Action:** *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council, on a 5-0 vote (roll call vote), **Authorized** the City Manager to do Everything Necessary for the Implementation of the CDBG Program, Including Execution of all Required Contracts.*

## **8. ZONING AMENDMENT, ZA-03-10; DEVELOPMENT AGREEMENT, DA-03-06: WATSONVILLE-SOUTH COUNTY HOUSING**

Director of Community Development Bischoff presented the staff report, indicating that there is a development agreement associated with the zoning amendment application that has to be heard by the

Council that said applicant will not be ready until the Council's April 7, 2004 meeting. He recommended that the Council continue the public hearing to April 7, 2004 to allow the Council to consider all of the applications at the same time.

Mayor Pro Tempore Sellers opened the public hearing. No comments were offered.

**Action:**        *On a motion by Council Member Carr and seconded by Council Member Chang, the City Council, on a 5-0 roll call vote, **Continued** the Public Hearing to April 7, 2004.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **9.        URBAN LIMIT LINE STUDY – AMENDMENT OF SCOPE OF WORK TO ADD AN IMPLEMENTATION PROGRAM AND AMEND THE CONSULTANT CONTRACT WITH MOORE IACOFANO GOLTSMAN**

Director of Community Development Bischoff presented the staff report. He informed the Council that in attendance this evening were Urban Limit Line Committee members Ann Beale, Tim Chiala, Janice Guglielmo, Art Puliafico, Joe Mueller and Bruce Tichinin. He presented a brief history of the project and talked about how the Committee ended up to where it is today. He indicated that the Urban Limit Line process began in early 2003, with the City hiring the firm of Moore Iacofano and Goltsman to assist with this effort. He stated that in February 2003, the Council appointed a 16-member committee to undertake the urban limit line/greenbelt study. He indicated that Mayor Kennedy chairs this committee and that Council Member Chang also serves on this committee. He informed the Council that the study not only deals with an urban limit line but a couple of issues of interest to the County and the City: 1) view shed protection and 2) large group assembly facilities that may want to locate outside the City limit. He indicated that the County has been an active participant to date and that the work program has been approved by the Council and endorsed by the Santa Clara County Board of Supervisors. He addressed the original scope of work for this project such that the committee would establish an urban limit line and begin to look at issues that would take place outside this line in terms of a greenbelt. He said that there was an assumption that once the line was established and some sense of what the committee wanted to do outside of the boundary, the City would undertake an implementation study, a separate project. When the City became involved with the committee, it became clear that the committee felt that it was critical that the implementation plan be an integral part of this process. He stated that many of the committee members felt that it was important to know what the City would do in terms of implementation before they could determine where an urban limit or greenbelt would be, including knowing what the tools would be and how it would be implemented. As a result of this strong feeling, the committee directed staff to develop an amendment to the scope of work for this project and charged staff with coming up with an implementation plan that could be undertaken without adding costs. He informed the Council that staff went through a number of iterations of an amended scope of work to include an implementation program. In February, the committee endorsed the proposed implementation plan that was before the Council at its first meeting in March 2004 and before the Council again this evening.

Planning Consultant Ken Schreiber addressed the work history that the committee has undertaken to date and described the implementation plan the committee is recommending to the Council. He stated that a greenbelt carries an expectation that at some point in time there will be some way to acquire land by a public agency, non profit agency, or a land trust. It may mean acquiring easements or conservation easements. He stated that this is one of the items that have led to the intense interest in focusing on an implementation plan. He informed the Council that the committee has worked to identify an urban limit line and greenbelt areas. He indicated that there are preliminary decisions and works in progress, noting that there is still a public process to go through. However, the committee has had a great deal of public participation in addition to committee meetings. He identified the areas discussed by the committee as a specific urban limit line and greenbelt areas for various parts of the City. He stated that the last area looked at and has caused a struggle for the committee is the southeast quadrant of the City which includes the area east of Highway 101, south of San Pedro, Foothill and Maple Avenues. He noted that this area is primarily flat land and that could easily be developed at some point in time as urban uses. He informed the Council that the issue of implementation has become the most intensely discussed issue. In response to a General Plan policy requesting that the committee investigate an industrial park east of Highway 101, the committee adopted a motion to consider having a 200± acre industrial park in the vicinity of Tennant and Murphy Avenues. He indicated that a specific location would be identified in the future update of the General Plan and is not being identified as part of this process. He stated that this action was approved by a vote of 12-2 of the advisory committee.

Council Member Carr felt that one of the main purposes of this task force, as called for in the current General Plan, is to identify the location of an industrial park. He said that it sounds as though the committee is stating that it will not meet this goal, putting off the goal until the next general plan update.

Mr. Bischoff said that the charge of the committee was to determine whether there was a need for an industrial park. He said that part of the background information provided to the committee was an inventory of vacant land available. He indicated that there were several hundreds of acres of land currently available. Therefore, the question was whether there was a need to designate an area for an industrial park at this point in time. He stated that the committee felt that there was not a need for an industrial park, given the necessary processes that must be followed with LAFCo and others such that designating an area for an industrial park, short term, was not a good idea.

Council Member Chang indicated that she and Council Member Carr served on the General Plan task force. She remembers clearly that the City was to designate an industrial park. She stated that the committee has not addressed this goal based upon an interpretation of what was stated in the general plan.

Mayor Kennedy said that it was his understanding that if the City was to specifically locate an industrial park; this would trigger the requirement of an environmental impact review, something that the City was trying to avoid.

Mr. Schreiber said that should the City designate a specific location for an industrial park, the designation would have to be a part of the environmental review process. He said that one of the critical

issues that would rise to the surface would be the mitigation for the loss of prime agricultural land. He noted that the City of Morgan Hill does not have a mitigation program in place for the loss of prime agricultural land. He said that the City of Gilroy is trying to wrestle with this issue. He indicated that the conclusion that staff and the committee came to is that LAFCo would not allow the expansion of an urban boundary, especially if there is a lot of vacant land available. If land is designated as an industrial park at this time, the City would have to turn this process into one that identifies an agricultural mitigation policy. It was the conclusion that the City should wait to see what the City of Gilroy comes up with and then work with LAFCo as this could become a difficult process; one that would add considerable time and expense to the process. He indicated that the consultant work program includes an assumption of an EIR. He said that there may be a way to avoid performing an EIR such as the preparation of a mitigated negative declaration. However, this decision can only be made after the committee reaches a set of recommendations, and staff/consultant performs an analysis as to what type of impacts the City is looking at and what type of environmental document would be appropriate. He stated that the way that the process is now structured, the timeline has the committee making a recommendation by late this year and that the issue would come before the City Council. The Council would review the committee's recommendations and authorize the environmental review. It is at this point that the consultants and legal advisors would give the City a clear indication of the type of environmental review required by law. Should the Council wish to revisit the industrial land use issue, this decision should be made sooner rather than later as the work to be undertaken in the next couple of months would be different and would need to be supplemented with the issue of an agricultural mitigation. He stated that the Council could revisit the issue at the end of the year. However, before the environmental review could be finalized and circulated, the City would need to come up with a mitigation package for the agricultural land loss.

Council Member Chang recommended that the Council discuss whether or not it should complete the general plan goal. She expressed concern that this project is being done half way correct. She said that the City tentatively agreed to a 200 acre industrial park but did not define where the park should be located. She said that the City will end up spending \$250,000 and that she does not want to get to a point where the Council does not have defined goals.

Mayor Pro Tempore opened the floor to public comments.

Ann Beale stated that although it has been a difficult effort, she felt that the committee/City is achieving something worthwhile and that she would like to see this effort continue.

Tim Chiala stated that he supports the new scope of work as it will clarify what will take place. He felt that the new scope of work will ease some concerns and scepticism about some items.

Jan Guglielmo expressed concern with the assessment district being discussed as one way to pay for the greenbelt. It was her view that this would be asking one segment of the community to pay for a greenbelt that everyone in the community would be enjoying was not a democratic way of proceeding. She requested that the City take a closer look at this concern, in light of today's economy and the fact that everyone is having a hard time paying for things. She requested that the Council keep this in mind. She noted that the City discussed a greenbelt in 1980 and that it is now 2004. She did not know if the

City could afford to implement a greenbelt today. She noted that there are many individuals residing in the area. When these individuals find out what is taking place, many will have opinions. She recommended that a mailer be sent to property owners to advise them that their lands are being discussed and contemplated for change. She felt that any action taken by the City will affect many individuals who live in the area, many for over 80 years. She felt that these property owners have been guardians of the land and care about the land.

Joe Mueller felt that this was an important issue and that the most difficult area is the southeast quadrant of the City, noting that this is a flat area and that there is a fair amount of development potential. He said that individuals have worked for years to maintain the quality of life in Morgan Hill. He felt that the City is rapidly coming to the time where development pressure on this quadrant would become even more so. He felt that it would behoove the citizens and the landowners to start the long planning process. He stated that this was the first step in working through the planning process. He said that the area contains a little over 1,000 acres, half the size of the urban reserve that the City of San Jose is starting with on their planning process. He recommended that the City and the landowners work together through the issues in order to plan for something that is a win for everyone. He said that there will be lots of discussion undertaken; some being heated discussions but that it is worth the effort. He said that it is critical to have the landowners a part of the process. Regarding the industrial land issue, the real issue is the agricultural mitigation. It will be critical to see how Gilroy comes up with their agricultural mitigation so that the City can make a decision on an agricultural mitigation plan. An alternative would be for the City to have trigger thresholds of certain events to proceed with the plan as opposed to waiting for the next general plan update. This would meet part of the intent of the general plan and allow the City to leverage work that is taking place rather than duplicating it efforts unnecessarily.

Art Puliafico felt that the business park area should be more specific for the 200± acres than being defined, broad-based. When the City came up with the 200 acres, it was based on a staff report that estimated that there was approximately 650 acres of vacant industrial land available at the time. These numbers have come down to 430 acres. He noted that some of the 650 acres are located outside the urban service area and that in order to receive approval it would have to go through LAFCo and the preparation of an EIR. He indicated that the general plan currently calls for an industrial business park south of Tennant Avenue, at the extension of Butterfield. He noted that this area is outside of the City's urban service area and would have to go through LAFCo. He said that the Tennant area consists of approximately 150 acres. He stated that he has some questions regarding the agricultural mitigation requirements as he could not find anywhere where it is specifically required by LAFCo. There is a question of waiting for Gilroy to come up with their agricultural mitigation policy. He felt that Morgan Hill was different from Gilroy as Gilroy has 5-10 times more prime agricultural land than Morgan Hill. He did not believe that the Morgan Hill can apply whatever Gilroy comes up with because the ratio acreage is skewed.

Bruce Tichinin felt that the fact that Gilroy is struggling with the similar issue should demonstrate to the Council that the urban limit line committee is not doing any worse in trying to grapple with these very serious and challenging issues. It was his belief that the City would find a way to preserve a greenbelt that all residents will appreciate, including compensating the landowners for any incidents of title

easement or fee titles that need to be acquired in order to make sure that the greenbelt will become permanent for all generations to come. He requested that everyone be patient.

Gordon Jacoby stated that the work of the committee has been good and important. It also includes a greentbelt program and how to deal with the agricultural mitigation. He felt that the City can integrate the two. He said that there were two primary purposes behind the general plan policy. When the general plan was completed, the general plan recognized that it would be highly probable that the City would run out of prime industrial land within the general plan period (10 years). As a result, two new industrial sites were suggested: 1) 150 acres south of Tennant, west of the Freeway; and 2) Condit Road, between Dunne and Cochrane Road. He felt that both of these areas were problematic, particularly the Tennant Avenue area as there are multiple land holdings and individuals residing in the area. He recalled that there was discussion about the possibility of taking the new industrial park and using it in some fair way to help finance a future greenbelt. He noted that the committee has come to a conclusion that a business park makes sense but that it has postponed any decisions on it for six years. He said that once a decision is made at a general plan level, it would take another 4-5 years before the City could welcome someone into the business park as it would have to go through LAFCo, zoning, design guidelines, and financing the improvements. Adding these factors together indicates that the City would not have another new business park until 10-11 years out. He disagreed with the projections of supply. He indicated that he presented to the committee a detailed list of what he views as prime industrial sites that would attract the kinds of companies that have located in Morgan Hill in the last 6-7 years. He came up with a total of 150 vacant acres. He said that the 400-600 acres include the problematic sites, the ones that have already been subdivided. He stated that the sites included in the new general plan were approved without any agricultural mitigations. He felt that the City needs an agricultural mitigation policy whether or not the City moves forward with the sites. It was his belief that in less than five years, the City will start to run out of prime industrial lands and the Council will need to have the workings of a new business park heading down the entitlement role or the City will not have a business park at the time that it runs out of vacant land.

Dan Puliafico, property owner in the area being discussed, stated that he has heard a lot of talk about protecting farm land. He inquired who has talked to the farmers in the area. He informed the Council that his family has been farming for over 50-60 years. If a property owner is not able to make it on their land, others will not be able to make it either. He noted that Tennant Avenue is a major thoroughfare and is no longer considered a country road. He indicated that he spoke to a member on the LAFCo board who inquired why the City has not submitted a preliminary application to LAFCo as it would not trigger an environmental impact report. He recommended that the City submit a preliminary application with LAFCo. He felt that it would be good to get a consensus from the farmers/property owners of the area because he did not believe that there were farmlands available to protect any longer.

No further comments were offered.

Mayor Pro Tempore Sellers inquired whether there was a possibility of an expanded notification or a way to identify some of the key areas and provide notification.



Mr. Bischoff informed the Council that the urban limit line workplan, as it exists today, includes a community workshop. He stated that once the committee reached a preliminary indication of what it thinks it would like to recommend to the Council, staff would notify the public of the tentative plan and conduct a public workshop to gather community input on the plan. Once the committee concludes its recommendation, public hearings will be held before the Planning Commission and the City Council. He said that the City could undertake a greater outreach effort. He indicated that staff would look into the comments relating to a preliminary application with LAFCo. He noted that the amended scope of work talks about developing an implementation plan. Should the Council believe that designation of land at this point is appropriate; the Council should enter into discussions. He addressed the specific action item as contained in the general plan. He stated that the general plan goal states that the greenbelt plan is to include a comprehensive planning effort to evaluate appropriate land uses in the rural county areas surrounding the City. Further, the plan shall specifically evaluate the potential for an industrial park southeast of Tennant Avenue and the Highway 101 interchange. He noted that the general plan policy indicates the potential for an industrial park but does not state that as part of this effort, the committee will designate an industrial park.

Mayor Pro Tempore Sellers felt that if the committee determines that there were specific areas where it is important that property owners should be notified that these areas be identified. He noted that the general plan policy, as it relates to the designation of an industrial park, does not address the issue of whether it is appropriate to so designate at this time or whether the City should wait. He felt that this was something that the Council needs to consider. He noted that it has been determined that the Council would not be acting on this item this evening and that the item would be continued to April 7.

Mr. Bischoff indicated that staff would be walking the Council through the implementation plan being recommending, should it be necessary. Also, to be discussed are alternative means for further Council involvement in this process. He said that these can be discussed at the April 7 meeting.

Mayor Kennedy stated that at one of the committee meetings held earlier this year, it was recognized that it would be difficult to move forward with the southeast quadrant. Therefore, a subcommittee of the urban limit line was appointed consisting of Alex Kennett, George Thomas, Tim Chiala, Joe Mueller and Ann Beale. He stated that this subcommittee was charged with developing a master plan for the southeast quadrant, looking at industrial, commercial, and open space for this area. The subcommittee will be reporting back to the urban limit line committee. He stated that the subcommittee's mission is to develop a master plan for the southeast quadrant that will address many of the issues discussed. He recommended that the subcommittee be allowed to finish their work, and that the Council proceed with the staff recommended action at the April 7 meeting; discussing proceeding with the implementation program as well as amending the consultant contract.

Council Member Tate stated that it was his belief that this item was calendared this evening to solicit Council direction before item 12 is chartered so that the Council does not have the committee going off in a direction, performing a lot of work only to return to the Council and be told that this was not the direction it was given. He recommended that the Council provide the committee with direction to make sure that the process is as efficient as possible. When he read workplan item 8, acquisition, principals, and priorities, he felt that this item was striking at the heart of the matter of the issues that are coming

forth with the southeast quadrant of the city. He noted that there is an item contained in the workplan that stipulates review of the draft principals and priority categories for the City Council. He was not sure when this was to take place. He felt that the committee appears to be proceeding with a lot of the things that the Council is trying to accomplish with the addition of item 12, specifically for the southeast quadrant. He felt that the Council had a good workplan in place that would bring some items before it that would help with the southeast quadrant in an overall principal and priority stand point. He inquired whether this is part of what the Council is trying to do as he did not hear any members of the committee bringing specific questions before the Council that would help shortcut the process.

Mayor Kennedy felt that Council Member Tate was correct with respect to the Council direction to the subcommittee. He felt that it was important that the subcommittee has input of the Council to make sure that they are headed in the right direction.

Mr. Bischoff informed the Council that the committee has a meeting scheduled in April and that the agenda for this meeting will deal with the view shed protection. He stated that this item is separate and apart from the implementation plan. Deferring any action until April 7 would not affect the committee's meeting. Under the current workplan, the committee is charged with checking in with the Council 2-3 times. He stated that two status reports have been presented to the Council. He said that all three of the options that staff has included for Council involvement does not get to what Council Member Tate was suggesting; that direction is provided by the Council before implementation commences. He recommended that staff be given the opportunity to walk the Council through the implementation plan. The Council can discuss the plan and provide staff with direction.

Council Member Tate said that instead of redoing Council involvement to have interactive workshops, if the current workplan already gives the Council what it needs in terms of a natural sequence of events, there is not a need to change the workplan a lot.

Mayor Pro Tempore Sellers noted that the Council will have another opportunity to review the implementation plan on April 7 prior to any additional action taking place. He recommended that the Council defer any further discussion and presentation to April 7.

Council Member Carr said that he would be willing to wait until April 7 as he would like to be walked through the implementation plan as he has some concerns. He said that the Council needs to be very careful and clear on its direction as the committee moves forward. He recommended that the task force understands what their task is at the beginning, proceed with the workplan, work on the task, and then bring the product back to the Council for discussion and consideration.

**Action:**        *By consensus, the Council continued this item to April 7, 2004*

## ***Redevelopment Agency and City Council Action***

### **CLOSED SESSIONS:**

City Attorney/Agency Counsel Leichter announced the below listed closed session items.

**CLOSED SESSION:**

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	2

Mayor/Chairman Kennedy and Council/Agency Member Tate excused themselves from the remainder of the meeting.

**OPPORTUNITY FOR PUBLIC COMMENT**

Vice Chair/Mayor Pro Tempore Sellers opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Vice Chair/Mayor Pro Tempore Sellers adjourned the meeting to Closed Session at 9:46 p.m.

**RECONVENE**

Vice Chair/Mayor Pro Tempore Sellers reconvened the meeting at 9:56 p.m.

**CLOSED SESSION ANNOUNCEMENT**

Agency Counsel/City Attorney Leichter announced that no reportable action was taken in closed session.

**FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

**ADJOURNMENT**

There being no further business, Vice Chair/Mayor Pro Tempore Sellers adjourned the meeting at 9:57 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, AGENCY SECRETARY/CITY CLERK**